

Kathryn Ross

BEFORE THE FEDERAL ELECTION COMMISSION

COMMON CAUSE
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005

KAREN HOBERT FLYNN
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005

v.

MUR No. 7279

MICHAEL WADDELL
Bone Collector
5157 GA Hwy. 219
Fortson, GA 31808

MR. WADDELL'S RESPONSE TO COMPLAINT

I. Introduction

COMES NOW Respondent Michael Waddell, by and through counsel, to answer the Complaint in the above-captioned matter filed by Complainants Common Cause and Karen Hobert Flynn. Complainants allege that Mr. Waddell violated the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*, as well as Federal Election Commission regulations. However, Complainants' allegations are based almost entirely on speculation. They repeatedly state that they have "reason to believe" that Mr. Waddell made certain expenditures, without identifying any specific facts or documentation supporting

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their belief. See Complaint ¶¶ 2, 3, 23, 26, 28. As is explained in full below, Complainants are mistaken in their speculation. Mr. Waddell spent less than \$100 during the federal election cycle of 2016, he recorded a 24-second video message at no cost, and he stated a few of his personal political opinions on Facebook. None of his activities transgress the FECA or pertinent regulations in any way.

Mr. Waddell is a hunting/outdoor personality who is part-owner of the "Bone Collector, LLC." He is also co-host of the "Realtree Road Trips" television show on the Outdoor Channel. He has never run for political office. Nor has he ever made a campaign contribution to any political campaign for any political office at the federal, state, or local level. In the 2016 election cycle, he became involved for the first time in a minimal way by expressing his personal political opinions about the 2016 presidential contest, principally by posting his opinions on Facebook.

II. Mr. Waddell's Limited Political Activity During 2016

The sum total of Mr. Waddell's political activity in the 2016 federal election cycle consists of the following four actions:

(1) On August 18, 2016, at the request of a friend in the hunting industry, he volunteered his time to record an approximately 24-second video message expressing his thoughts about America's hunting heritage and about whether or

not Hillary Clinton as president would be supportive of the rights of American hunters. Waddell Affidavit ("WA"), attached as Exhibit 1, ¶ 6. The video was sent to the friend, who then incorporated it into an 8 minute and 10 seconds "Heartland for Trump" video featuring various hunting personalities. *See* <https://www.youtube.com/watch?v=8h4DkQqWXDc>. The recording of Mr. Waddell's message took 5-10 minutes of his time. WA ¶ 7. He used his own video camera to record the video. *Id.* And the camera-operator volunteered his 5-10 minutes of time to Mr. Waddell as a favor, at no charge. WA ¶ 8.

(2) On September 24, 2016, Mr. Waddell posted on Facebook the 24-second message that he had recorded, spending a total \$99.96 to "boost" the distribution of the post on Facebook. WA ¶ 9. The receipt confirming the amount of the Facebook charge is attached as Exhibit 2.

(3) On September 27, 2016, Mr. Waddell posted on Facebook a description of the "Heartland for Trump" video inviting people to watch it. The Facebook post included a link that took readers to Mr. Waddell's Bone Collector website, where the video was displayed. Mr. Waddell did not spend any money boosting or promoting this Facebook post. WA ¶ 10.

(4) On a few occasions – October 4, October 16, November 7, and November 8, 2016, Mr. Waddell posted on Facebook organic (unpaid, unboosted) messages urging his Facebook fans to support Donald Trump. He simply posted

these messages (one of which was a “selfie” video) on Facebook and spent no money promoting or boosting these Facebook posts. WA ¶ 11.

III. Complainants’ Allegations are Without Merit

Complainants are apparently unaware of just how limited Mr. Waddell’s expenditures and involvement were in expressing his political opinions regarding the 2016 presidential election. Consequently, their speculative allegations are incorrect in numerous respects. As is explained below, none of the allegations warrant further consideration by the Commission.

A. Count I is Meritless Because Mr. Waddell Spent Less than \$250

In their first allegation, Complainants claim without evidence that Mr. Waddell “made independent expenditures in excess of \$250 in connection with the 2016 presidential election by paying Facebook to distribute his September 2016 public communications expressly advocating the election of 2016 presidential candidate Donald Trump and did not file required disclosure statements for such independent expenditures....” Compl. ¶ 23.

Complainants are grossly mistaken in speculating that Mr. Waddell spent more than \$250 boosting his post. As is explained in Mr. Waddell’s affidavit, he spent a grand total of a \$99.96 publishing his September 2016 Facebook post concerning the presidential election. WA ¶ 9; Exh. 2. Because this expenditure

did not exceed \$250, federal law does not require the filing of any disclosure statement. 52 U.S.C. § 30104(c)(1) (“Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value *in excess of \$250* during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.”) (emphasis supplied).

With respect to the 5-10 minutes of time that Mr. Waddell spent recording the video message, that minimal amount of time was “uncompensated personal services related to ... internet activities,” and therefore does not constitute an “expenditure.” 11 C.F.R. § 100.155(a)(1). Thus, the sum total of Mr. Waddell’s expenditure was \$99.96. Count I must therefore be dismissed.

Count I must be dismissed for the additional reason that Mr. Waddell did not expressly advocate the election of Donald Trump or the defeat of Hillary Clinton in the 24-second message. The content of the message and the lack of express advocacy are discussed in Section III,C, below.

B. Count II is Meritless Because Mr. Waddell Did Not Spend Any Money Republishing Trump Campaign Materials

Complainants allege in Count II of their Complaint that Mr. Waddell “made expenditures in excess of \$2700 to republish candidate Donald Trump’s campaign materials.” Compl. ¶ 26. This allegation is also false, reflecting Complainants’ apparent lack of knowledge regarding the relevant facts.

The only Trump campaign material that Mr. Waddell “republished” in any sense was the 8-minute-and-10-second “Heartland for Trump” video. However, Mr. Waddell simply posted an unboosted statement on Facebook inviting readers to watch the video. Thus, Mr. Waddell spent *zero* dollars promoting that post. Because he spent *no* money whatsoever in support of this organic (unpaid, unboosted) post, it does not fall within the restrictions of 11 CFR § 109.23(a). Count II must therefore be dismissed.

C. Count III is Meritless Because Mr. Waddell's Statement on Facebook Did Not Expressly Advocate the Election or Defeat of a Candidate

Finally, Complainants allege in Count III of their Complaint that Mr. Waddell “expressly advocat[ed] the election or defeat of a clearly identified candidate” without an accompanying disclaimer providing the name and address of the person who paid for the communication, under 52 U.S.C. § 30120. Compl. ¶ 27. Although Complainants do not identify which communication they are referring to, presumably they are referring to the boosted Facebook post of September 24, 2016, since that is the only message that Mr. Waddell spent any money on. As noted above, Mr. Waddell spent only \$99.96 boosting this Facebook post. WA ¶ 9. He volunteer the 5-10 minutes of his time that it took to video the statement, and spent no money producing the statement. WA ¶¶ 7-9.

To fall within the ambit of 8 U.S.C. § 30120, an independent expenditure by an individual must meet two criteria: (1) it must finance "communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising," 8 U.S.C. § 30120(a); and (2) it must "expressly advocate[e] the election or defeat of a clearly identified candidate." 8 U.S.C. § 30120(a).

The second requirement is not satisfied in the instant case; consequently, 8 U.S.C. § 30120(a) does not apply. Mr. Waddell's statement did not expressly advocate the election of candidate Donald Trump or the defeat of Hillary Clinton. His entire statement in the boosted Facebook post was as follows:

I'm so proud to be from a hunting family. And I can tell you I thank God every day for having an opportunity to put food on my table for my family, just like so many families before us. And when hunting becomes politically incorrect, let me tell you something. America has lost its way. And I believe personally that Hillary Clinton will never, ever support our hunting heritage.

https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816. Mr. Waddell did not expressly advocate the election of, or even mention, Donald Trump. Nor did he expressly urge Facebook viewers to vote against Hillary Clinton. Indeed, in the first four sentences of the five-sentence message he discussed America's hunting heritage in terms unrelated to the 2016 election. And in the final sentence, he simply expressed skepticism of the view (held by some) that Hillary Clinton would support hunting and America's hunting

heritage. This did not constitute communication “expressly advocating the election or defeat of a clearly identified candidate.” 8 U.S.C. § 30120(a). Rather, it was merely his answer to claims made by Clinton supporters regarding Hillary Clinton’s approach to hunting rights. Because Mr. Waddell did not expressly advocate the defeat of Hillary Clinton, no disclaimer is required by law.

Finally, assume *arguendo* that Mr. Waddell had expressly advocated the election of Donald Trump (which he did not). Suppose he had added something along the lines of “So please vote for Donald Trump on November 8th,” at the end of the boosted video message. Even if Mr. Waddell *had* made such a statement expressly urging the election of a clearly identified candidate, it is unclear whether the disclaimer requirements of 52 U.S.C. § 30120(a) would apply to such communication.

In 2011, Facebook through its representatives requested that the FEC render an advisory opinion on this subject. In Advisory Opinion Request 2011-09, Facebook requested an advisory opinion stating that Facebook ads (similar to Mr. Waddell’s boosted post) are exempt from the disclaimer requirement, under the “small items” and “impractical” exceptions. AOR 2011-09, at p. 8; *see* 11 C.F.R. § 110.11(f)(1)(i) (small items exception), and 11 C.F.R. § 110.11(f)(1)(ii) (impractical exception). The Facebook request also noted that in October of 2010, the Commission had rendered an opinion concluding that Google search ads

purchased by political committees need not include a disclaimer within the ad.

AO 2010-19 (cited in AOR 2011-09, at p. 2). On June 15, 2011, the Commission deadlocked 3-3 and did not render any advisory opinion in response to Facebook's request. Thus, the question of whether the disclaimer requirement applies to boosted Facebook posts remains an issue that is subject to differing legal opinions.

In addition to the "small reasons" and "impractical" exceptions considered by the Commission in 2011, it should also be noted that many boosted Facebook posts are *de minimis* in nature. The application of the disclaimer requirement of 52 U.S.C. § 30120(a) to minimally-boosted Facebook posts would be nonsensical and intrusive on the First Amendment rights of American citizens to engage in core political speech. In an organic post, a Facebook user reaches those people who have already "liked" his or her Facebook page. But Facebook users routinely attempt to speak to a slightly larger audience (and thereby attract more likes to the users' respective pages). Individuals, news organizations, and businesses often boost their posts in an effort to gain more "impressions" and "link clicks" in the Facebook social media world. Facebook permits an individual to spend *as little as one dollar* boosting the reach of his or her Facebook post.

The notion that a person who expresses his or her opinion regarding a political candidate, then spends \$1 to boost the number of social media impressions he gains through the post, must include in the post "paid for by

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Exhibit 1

BEFORE THE FEDERAL ELECTION COMMISSION

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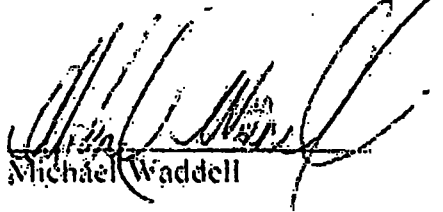
I, MICHAEL WADDELL, am competent to testify to the matters stated herein, and having been duly sworn, do hereby declare and affirm, to the best of my knowledge and belief:

1. I am a United States citizen.
2. My home address is 1 Hamilton, GA 31811
3. My occupation is outdoor/hunting personality. I am part-owner of "Bone Collector, LLC." I am also a co-host of the "Realtree Road Trips" television show on the Outdoor Channel.
4. I have never run for, or held, any political office.
5. I have never made a campaign contribution to any political campaign for any political office at the federal, state, or local level.

6. On August 18, 2016, at the request of Mr. Keith Mark – a friend in the hunting industry – I volunteered my time to record an approximately 24-second video message expressing my thoughts about America's hunting heritage and about whether or not Hillary Clinton as president would be supportive of the rights of American hunters. I sent Mr. Mark the video message, which was later incorporated into a "Heartland for Trump" video featuring several hunting personalities.
7. The recording of my 24-second video message took 5-10 minutes of my time. I used my own video camera to record the video.
8. I asked Cohen Stone, who is an experienced camera operator, if he would video the 24-second message for me as a favor. He agreed to do so, and spent 5-10 minutes of his time videoing me.
9. On September 24, 2016, I posted on Facebook the 24-second video message that I had recorded with Cohen Stone on August 18, 2016. I spent a total of \$99.96 to boost the distribution of that post on Facebook. I spent no additional money promoting or publishing the post.
10. On September 27, 2016, I posted on Facebook a description of the "Heartland for Trump" video and invited people to watch it. This Facebook post included a link to my Bone Collector website, where the video was

displayed. I did not spend any money boosting or promoting this Facebook post.

11. On October 4, October 16, November 7, and November 8, 2016, I posted on Facebook various organic messages urging my Facebook fans to support Donald Trump. One of these was a selfie video taken from a deer-hunting tree stand. I spent no money promoting or boosting these posts.
12. The above-mentioned activities are all that I recall doing during 2016 to publicly express my views regarding Donald Trump or Hillary Clinton.
13. I did not believe that any of these personal, political statements constituted campaign activity that was regulated by the Federal Election Commission.

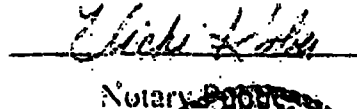

Michael Waddell

State of Georgia

ss:

County of Fulton

Subscribed and sworn to before me, a Notary Public in and for the above county and state, this 31st day of October, 2017.


Notary Public

My commission expires 2-7-2020

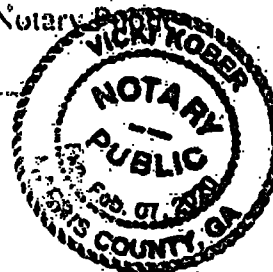


Exhibit 2

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Receipt for Stone Road Media

Account ID: 3



Payment Date
Sep 28, 2016 9:08am

Payment Method
VISA 1
Reference Number: V4JNG82P82

Transaction ID
634209880024053-2141873

Product Type
Facebook

Paid

\$753.78 USD

You're being billed because you reached your \$750.00 billing threshold.

Campaigns

[REDACTED]		\$10.58
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 16+	11,137 Impressions	\$10.58
[REDACTED]		\$15.38
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 13+	12,313 Impressions	\$15.38
[REDACTED]		\$18.63
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - 18+	428 Link Clicks	\$18.63
[REDACTED]		\$38.98
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 18-55	458 Link Clicks	\$38.98
[REDACTED]		\$46.99
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - 13+	484 Link Clicks	\$46.99
[REDACTED]		\$47.58
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - M - 18+	488 Link Clicks	\$47.58
[REDACTED]		\$48.20
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - W - 13-45	539 Link Clicks	\$48.20
[REDACTED]		\$5.74
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - M - 16+	68 Link Clicks	\$5.74

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[REDACTED]		\$119.12
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - 20+	573 Link Clicks	\$119.12
[REDACTED]		\$36.50
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - 13+	11,712 Impressions	\$36.50
[REDACTED]		\$24.44
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US - 18+	11,034 Impressions	\$24.44
[REDACTED]		\$12.28
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
[REDACTED] Target	9,115 Impressions	\$12.28
[REDACTED]		\$25.03
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 13+	10,186 Impressions	\$25.03
[REDACTED]		\$51.12
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - M - 20-55	31,335 Impressions	\$51.12
[REDACTED]		\$49.85
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 13+	21,087 Impressions	\$49.85
[REDACTED]		\$49.33
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 20-55	29,045 Impressions	\$49.33
[REDACTED]		\$55.21
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
US, CA - 13-55	372 Link Clicks	\$55.21
Waddell_Trump_2016		\$99.98
From Sep 24, 2016 7:30pm to Sep 28, 2016 9:08am		
Waddell_Trump_2016	104,593 Impressions	\$99.98